



U.S. Department of Justice
Immigration and Naturalization Service

HQASM 120/10.4.1

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425 I Street NW
Washington, DC 20536

NOV 1 2001

MEMORANDUM FOR: ASYLUM OFFICE DIRECTORS
ASYLUM OFFICE DEPUTY DIRECTORS
SUPERVISORY ASYLUM OFFICERS.
QA/TRAINERS
ASYLUM OFFICERS

FROM: Joseph E. Langlois, Director
Asylum Division
Office of International Affairs

SUBJECT: Clarification of Procedures for Processing Applicants Covered by
Deferred Enforced Departure (DED) who are Ineligible for
Asylum.

This memorandum clarifies procedures for the adjudication of affirmative asylum cases for persons who are covered by Deferred Enforced Departure (DED)¹ but who are not eligible for asylum and who are not in valid status. See INA §§ 212(a) and 237(a) and 8 C.F.R. § 208.14(c)(1) and (2).

The procedures in this memorandum do not change current procedures covering the GTMO/DED Haitians discussed in the *Procedures Manual - Affirmative Asylum Process*. Section III(B)(8), "GTMO/DED Haitians"

The decision to extend DED protection to individuals is made by the President² and the decision is issued as an Executive Order or a Presidential Memorandum. Since the President orders DED, which is a temporary, discretionary, administrative stay of deportation granted to aliens from designated countries, it is not a statutory provision under the Immigration and Nationality Act and as such it is not considered an immigration status. Historically, DED has been issued five

¹ DED, in use since 1990, was formerly known as Extended Voluntary Departure (EVD). EVD, in use from 1960 until 1990, was used by the Attorney General pursuant to INA § 103.

² Unlike TPS, DED has no statutory basis, but rather emanates from the President's constitutional powers to conduct foreign relations. See INS Website.

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times since 1990.³ Most recently, DED was extended to Liberians starting on September 29, 1999, due to compelling foreign policy reasons, after it was decided that further extension of Temporary Protected Status for Liberians was no longer warranted after September 28, 1999. President Clinton extended DED for Liberians in 2004 and President Bush has just re-extended it until September 29, 2002.⁵

DED is not considered to be a status under 8 CFR § 208.14(c)(2) (applicant who is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status). Therefore, individuals who are covered by DED and are not eligible for asylum must be referred pursuant to 8 CFR § 208.14(c)(1) unless they otherwise have valid status or parole at the time of decision, described in 8 CFR § 208.14(c)(2) (valid immigrant, nonimmigrant status, Temporary Protected Status) or 8 CFR § 208.14(c)(3) (valid parole). Therefore, asylum officers should refer DED-protected applicants, as opposed to denying these cases, when they are not eligible for a grant of asylum and they possess no other form of immigration status.

[Attachment](#)

³ DED was issued to: Approx. 80,000 Chinese nationals present in the U.S. since June 1989 (DED 1990 -1993); Approx. 150,000 Salvadorans who had TPS (DED June 1992-December 31, 1994); Approx. 2,000 Persian Gulf Evacuees (DED ended January 1, 1997); Approx. 40,000 Haitian parolees or applicants for asylum prior to December 31, 1995 (DED December 23, 1997 - 1998); and approx. 10,000 Liberians who had TPS (DED September 29, 1999-present).

⁴ INS. "Deferred Enforced Departure Extended for Liberians" News Release (Washington, DC: 28 September 2000).

⁵ Bush, George. White House. *Measures Regarding Certain Liberians in the United States.*, Presidential Memorandum for the Attorney General (Washington, DC: 25 September 2001) (<http://www.whitehouse.gov/news/releases/2001/09/20010925-7.html>), 1 p.



U.S. Department of Justice
Immigration and Naturalization Service

HQISD 120/12.1

425 I Street NW
Washington, DC 20536

October 12, 2001

MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
DISTRICT DIRECTORS
OFFICERS IN CHARGE

FROM: William R. Yates /S/
Deputy Executive Associate Commissioner
Immigration Services Division
Office of Field Operations

SUBJECT: Extension of the Executive Order Granting Deferred Enforced Departure to Certain Liberians in the United States as of September 29, 2001.

The President of the United States has signed a memorandum to the Attorney General Directing him to extend the grant of deferred enforced departure (DED) status to certain Liberians in the United States, for a one-year period beginning on September 29, 2001. These Liberians will also be eligible for DED-related employment authorization.

Liberian applicants for DED-related employment authorization will file the Form I-765, Application for Employment Authorization, with the Form I-765D, Liberian Deferred Enforced Departure (DED) Supplement to Form I-765, at the District Office or Suboffice that has jurisdiction over the applicant's place of residence. District Offices or Suboffices will adjudicate the forms, schedule the applicant for fingerprinting at an ASC, if necessary, and issue employment authorization documents to approved applicants. This memorandum provides instructions for the administration of the Liberian DED program.

Effect of DED

Eligible Liberians in the United States as of September 29, 2001 are:

- Subject to deferral of deportation or removal until September 29, 2002;
- To be granted employment authorization valid until September 29, 2002; and,
- In the case of eligible Liberian nationals in INS detention, they must be released.

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Procedures

The authorized period of employment may have ended on September 29, 2001 for some applicants. To prevent a lapse in employment authorization, District Directors should take the steps necessary to immediately process DED-related employment authorization applications.

Forms

Applicants must file Form I-765, and Form I-765D, with the District Office or Suboffice that has jurisdiction over the applicant's place of residence.

Fees

No fee is required for Form I-765, when filed for employment authorization as part of the Liberian DED program. However, applicants who are required to be fingerprinted, as described below, must submit a twenty-five dollar (\$25) fingerprinting fee.

Fingerprints

Only certain applicants for DED-related employment authorization will need to be fingerprinted. Applicants described below **do not** require fingerprinting:

- An applicant renewing DED-related employment authorization who has a previous FBI clearance from a prior DED application, **or** an applicant previously approved for Temporary Protected Status (TPS).

Applicants who fall into one of these groups shall be considered eligible for DED-related employment authorization. The Forms I-765 and I-765D must be immediately adjudicated, and if approved, the applicant must be issued an employment authorization document (EAD).

Any other applicant for DED or DED-related employment authorization must be immediately scheduled for fingerprinting at a local ASC. The District Director should not favorably adjudicate either Form I-765 or I-765D until a fingerprint response is received from the FBI.

Eligibility

In order to be eligible for DED, the alien must demonstrate that he/she is a Liberian national who was present in the United States as of September 29, 2001. DED benefits **will not** be granted to a Liberian national:

- Who is ineligible for Temporary Protected Status (TPS) under 244(c)(2)(B) of the Immigration and Nationality Act;
- Whose removal the Service determines is in the interest of the United States;
- Whose presence, or activities in the United States, the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States;
- Who voluntarily returned to Liberia or his/her country of last habitual residence outside the United States;
- Who was deported, excluded, or removed prior to September 29, 2001; or
- Who is subject to extradition.

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An applicant's eligibility for DED must be determined on the basis of Form I-765D and supporting documentation.

Interview

Interviews are optional and at the discretion of local policy. However, it is not anticipated that the majority of applicants will warrant an interview, as most will be able to demonstrate eligibility based on a previous approval for DED during the past year, or were TPS beneficiaries prior to the DED program. An interview is required for all applicants who do not submit documents, or present only an affidavit to demonstrate eligibility.

Employment Authorization Card Processing

In EAD processing, I-688B cards should be issued under the "274a.12(a)(11)" code, and expiration dates should be keyed in as "09/29/02" for Liberian beneficiaries. To obtain the proper software, and other software issues, contact the INS Help Desk.

Detention Issues

Nationals of Liberia who are eligible for DED must be released from INS detention. Each office must immediately review the A-file of any national of Liberia presently detained in your jurisdiction to determine eligibility for DED. The eligibility of a Liberian national encountered by the Service in a place other than a District Office or Suboffice should be determined immediately. **See the attached instructions.**

Form Availability

A revised Form I-765D, Liberian DED-Supplement to Form I-765 will be available soon. In the meantime, please continue to use the current version. This form can be duplicated and distributed to applicants. Applicants may request Forms I-765 and I-765D from the INS Forms Center at 1-800-370-3676.

Questions regarding the Liberian DED program may be directed through appropriate supervisory channels.

Attachment:

- (1) Treatment of Encountered Liberians during the DED Period